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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ELSEVIER INC.,

4 Plaintiff,

5 v.

15 CV 4282

6 SCI-HUB, et al.,

7 Defendants.

8 -----x

9 New York, N.Y.

10 July 7, 2015

4:30 p.m.

11 Before:

12 HON. RONNIE ABRAMS,

13 District Judge

14 APPEARANCES

15 DEVORE & DEMARCO LLP
Attorneys for Plaintiff

16 BY: JOSEPH V. DeMARCO
17 DAVID MILTON HIRSCHBERG
KATE TSYUKIN

18 ALEXANDRA ELBAKYAN
19 Defendant pro se

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(Telephone conference in chambers)

THE COURT: Hi. This is Judge Abrams.

MR. DeMARCO: How are you, Judge Abrams?

THE COURT: Good. Thank you.

MR. DeMARCO: I have you on you speaker phone, if that's okay. I'm here with two of my colleagues, David Hirschberg and Kate Tsyukin, who are attorneys at the firm.

THE COURT: Thank you, Mr. DeMarco.

I have a court reporter here. I will note for the record that we worked together at the U.S. Attorney's Office, so that will be on the transcript here.

Look, as you know, I will be handling the July 21st preliminary injunction in this matter. I'm on Part 1, and I believe you have been made aware that Judge Sweet will be out of town.

MR. DeMARCO: Yes, your Honor.

THE COURT: I wanted to touch base beforehand and discuss logistics and the procedure. Obviously, that will depend, in part, on if defendants appear.

Other than the newspaper article that you sent in, have you heard at all from the defendants or have any reason to believe that they intend to appear in this action?

MR. DeMARCO: We have not heard from them. We have no reason to believe that they will appear.

THE COURT: All right. I will just note for the

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1 record that it looks as though plaintiffs have successfully
2 served all defendants with the preliminary injunction materials
3 at this point, and pursuant to Local Rule 6.1, defendants had
4 14 days in which to file any opposition papers, which has
5 expired.

6 Let me ask you this: Have you heard anything from
7 amici following your letter in which you indicate that you no
8 longer intend to seek the relief requested in paragraphs 2 and
9 6 of the original order?

10 MR. DeMARCO: I have not, your Honor.

11 THE COURT: So I will tell you generally how I
12 proceed, although again if defendants don't appear on Tuesday,
13 there will likely be less to do in person at the hearing.
14 Pursuant to my individual rules -- and to the extent you
15 haven't looked at them, I encourage you to do so -- unless
16 parties make a formal request otherwise, all direct testimony
17 comes in by way of affidavit. But if you wanted a witness to
18 be heard live on direct, you would make an application to me in
19 advance. Either way, that person has to be available for
20 cross-examination in the event that defendants intend to
21 cross-examine the witnesses. Again, since defendants have not
22 yet appeared, I don't think that will be necessary, but I just
23 want to let you know in the event they do appear on Tuesday.

24 MR. DeMARCO: That makes perfect sense, your Honor.
25 Our inclination, to be quite frank, was that if the defendants

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1 did not appear, we were going to rest on our papers unless your
2 Honor wanted to hear from witnesses. We put in some fairly
3 detailed papers. We may have one or two additional
4 declarations to put in. Unless your Honor was looking for live
5 testimony, we were comfortable resting on our papers. That's
6 our current thinking.

7 THE COURT: I'm comfortable with that, as well. I
8 will let you know if I have any particular issues that I want
9 to hear live testimony on. Right now, I don't anticipate that
10 if defendants don't appear. So I'm fine with that. I will
11 give you the opportunity to be heard and make arguments if you
12 would like to do that, but I will, obviously, have read all of
13 the papers and be familiar with everything that you have
14 submitted.

15 As to the issue raised in the brief submitted by the
16 amici, are you now seeking the same order but just with
17 paragraphs 1, 3, 4, and 5?

18 MR. DeMARCO: I have it in front of me now, your
19 Honor, and we are comfortable excising 2 and 6. That would
20 leave 1, 3, 4, and 5.

21 THE COURT: Right. Okay.

22 MR. DeMARCO: And 7.

23 THE COURT: Yes. You're correct. Okay. Right. I
24 think that is it. I really just wanted to touch base. This
25 is, obviously, more important to do if we have parties

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1 appearing on both sides so that we can talk about logistics, we
2 can talk about any discovery that needs to occur prior to the
3 hearing and talk about my procedures, but it seems like it is
4 just going to be us, but I will see you on Tuesday.

5 MR. DeMARCO: That makes perfect sense. Thank you
6 very much, your Honor.

7 Of course, if we hear or get any indication that the
8 defendant might appear, we will, of course, let the Court know.
9 If I could just ask the Court and its staff, if they hear the
10 same, we may not here, if you could let us know. That way
11 we're prepared in the event that we do need to call witnesses.

12 THE COURT: Yes. If I hear anything, I will put
13 something on the docket to that effect.

14 As I said at the start, I have a transcript of today's
15 telephone conference, so you should reach out to the court
16 reporter if you're in need of the transcript. Otherwise, we
17 will see you on Tuesday.

18 MR. DeMARCO: Thank you very much.

19 I did want to clarify one small point, your Honor. If
20 I can ask one question for guidance as between you and Judge
21 Sweet. We have every reason to believe, based upon
22 Ms. Elbakyan's comments and otherwise that she, in fact, has
23 received full notice of everything that has transpired to date.
24 I did want to point out to the Court that with respect to the
25 Sci-Hub site defendants, we did get some bounce-backs on the

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1 email addresses for them. I don't believe that is a material
2 problem insofar as Ms. Elbakyan has taken responsibility for
3 that site. I also wanted to point out that the postal service
4 is having trouble delivering the hard copy to the address in
5 Kazakhstan. Again, in light of what I think is abundantly
6 clear, that she has received notice, I don't think that is a
7 material problem, as well, but I just did want to point that
8 out to you.

9 THE COURT: Thank you for making that record clear.

10 All right. I think that's it. I will see you on
11 Tuesday.

12 MR. DeMARCO: One quick guidance question. We were
13 anticipating filing a motion for permission to serve discovery
14 on third parties in advance of the Rule 26 conference. Is that
15 a motion properly addressed to Judge Sweet's chambers or to
16 your Honor? It's purely on the papers.

17 THE COURT: I think you should make that to Judge
18 Sweet. I'm sorry. I don't mean to make this difficult for
19 you. I will reach out to his chambers, though, so that they
20 know that they should feel free to send it to me, but I just
21 want to be very careful because I'm not yet on Part 1, and it
22 is really up to him and his chambers to decide what to send to
23 the Part 1 judge. As a result, in the first instance, it
24 should go to him, but it may well come back to me, and I'm
25 happy to deal with it at that point.

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MR. DeMARCO: Understood.

THE COURT: Okay. Thanks so much.

(Recess)

(4:55 p.m.)

THE COURT: This is Judge Abrams.

Mr. DeMarco, are you and your colleagues on the line?

MS. ELBAKYAN: Hello.

THE COURT: Ms. Elbakyan, is that you?

MS. ELBAKYAN: Yes.

THE COURT: Mr. DeMarco, are you on, as well, with your colleagues?

MR. DeMARCO: Yes, your Honor.

THE COURT: Ms. Elbakyan, I'm a judge here in the Southern District of New York. I'm not the judge who is assigned to this case. That is Judge Sweet. But he scheduled a hearing for July 21st on this case. And to the extent that the hearing goes forward on that date, I will be handling the hearing.

I'm not going to talk about anything substantive on the merits on this call. I just wanted to talk about the procedure and make sure that everyone does what needs to be done in advance of the July 21st hearing. Okay?

MS. ELBAKYAN: Okay.

THE COURT: So you have not yet appeared in this action. You have not had a lawyer file a notice of appearance

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1 on your behalf.

2 Do you intend to obtain an attorney to represent you
3 in this case?

4 MS. ELBAKYAN: No.

5 THE COURT: You're going to represent yourself?

6 MS. ELBAKYAN: I don't.

7 THE COURT: You're going to represent yourself? Is
8 that right?

9 MS. ELBAKYAN: Yes. I think so.

10 THE COURT: All right. You're going to have to figure
11 it out because we have a hearing scheduled a week from Tuesday,
12 and your deadline has already passed for you to submit any
13 responsive papers.

14 Did you receive all of the papers, all of the legal
15 briefs and the papers submitted by the plaintiff?

16 MS. ELBAKYAN: Yes. I received but can I submit a
17 reply?

18 THE COURT: You can submit it to the Court. I will
19 grant you a short extension to do that, to respond on the
20 papers. I will give you until Monday to do that, so that will
21 be July 13th. So, by Monday, you need to submit the papers
22 here to the Court in response --

23 MS. ELBAKYAN: Yes. Can I submit them by email? Can
24 I submit it electronically?

25 THE COURT: We have a Pro Se Office here. "Pro se"

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1 means people who represent themselves who don't have attorneys.
2 We have a Pro Se Office here, and they can't advise you on the
3 law, but they can help you with things like filing. So we have
4 a court website. It is the website for the United States
5 District Court for the Southern District of New York. If you
6 go on it, there is a section on the pro se unit, and you'll
7 file all your documents with them, and they will file it with
8 the Court. You can reach out to them. If you have questions,
9 we will give you the phone number of the Pro Se Office. As I
10 said, you can find information about the Pro Se Office on the
11 court website.

12 What is your relationship --

13 MS. ELBAKYAN: So I --

14 THE COURT: Go ahead.

15 MS. ELBAKYAN: Yes. I can send by phone, yes?

16 THE COURT: No. You can call the Pro Se Office, but
17 we have a hearing scheduled for the 21st, and there are going
18 to be witnesses at the hearing, and someone is going to have to
19 come represent you and the hearing. If you want to represent
20 yourself, you can do that, but you will have to come in person.

21 MS. ELBAKYAN: Yes. If I cannot come in person?

22 THE COURT: You can hire an attorney to come represent
23 you in person, but it is an evidentiary hearing. There will be
24 witnesses that will be available to be cross-examined, and then
25 if you wanted to be heard, if you wanted to submit an

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1 affidavit, for example, saying certain factual statements, you
2 would have to be here, as well.

3 Let me ask you this: What is your relationship to the
4 corporate defendants, to www.sci-hub.org? Do you run that?

5 Hello?

6 MS. ELBAKYAN: Hello.

7 THE COURT: Hello? Can you hear me?

8 MS. ELBAKYAN: I hear you.

9 THE COURT: What about The Library Genesis Project or
10 Libgen.org?

11 MS. ELBAKYAN: No, I don't run the website.

12 THE COURT: And what about Libgen.org?

13 MS. ELBAKYAN: That's the same.

14 THE COURT: That's the same. I know, it's just
15 Libgen.org is the name under which the Library Genesis Project
16 does business. Is that right?

17 MS. ELBAKYAN: No. There is no business. This is a
18 totally noncommercial website. They provide all for free.

19 THE COURT: Who runs Libgen.org or The Library Genesis
20 Project? Do you?

21 MS. ELBAKYAN: No. No.

22 THE COURT: I'm asking these questions because a
23 corporation, a corporate entity, something other than a person,
24 cannot represent itself in court in the United States in a
25 federal court. It needs to be represented by an attorney. A

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1 person can represent him or herself. As to these entities, we
2 need some representation for them. Do you intend to try and
3 get an attorney?

4 MS. ELBAKYAN: But I cannot. No money to hire an
5 attorney. We don't have money to hire an attorney.

6 Hello?

7 THE COURT: Yes. Mr. DeMarco, let me ask you a
8 question.

9 MR. DeMARCO: Yes, your Honor.

10 THE COURT: Do you intend to seek discovery prior to
11 this hearing?

12 MR. DeMARCO: So we're still determining that, your
13 Honor; but at this stage, the only discovery we were going to
14 be seeking would be against third parties. We will have to
15 think that over in light of the fact that we have one party on
16 the line. I think we need to think about that, your Honor. I
17 have not given that any thought, to be perfectly honest with
18 you.

19 THE COURT: What I would like you to do is think about
20 that, and then if you can write a letter to Judge Sweet and to
21 me and let me know if you intend to seek discovery. I'm trying
22 to figure out if the hearing is going to be put off, if there
23 is a need for that, particularly if Ms. Elbakyan wants to
24 submit a response by Monday. I don't know if you will want to
25 reply to that or if there will be a need to have discovery in

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1 advance of the hearing, but I just want to try to set a
2 schedule in place in light of these new developments. I
3 understand this is new for you, this development, and you may
4 need to think about next steps.

5 MR. DeMARCO: Thank you, your Honor.

6 In the event we are not going to be seeking discovery
7 in advance of the hearing from the defendant on the line, would
8 your Honor be inclined to have us go forward on the 21st?

9 THE COURT: I think so. I think we're going to need
10 to think about the logistics. I don't know if Ms. Elbakyan is
11 going to try to get an attorney.

12 Ms. Elbakyan, some attorneys are willing to represent
13 people for free. They are called pro bono attorneys. I don't
14 know if you'll be able to obtain a pro bono attorney to
15 represent you in this action. I don't know if you intend to
16 try to get an attorney. As I said, today I am not deciding the
17 merits of the action; I'm just trying to set a schedule and
18 deal with the logistics of how we're going to proceed.

19 MS. ELBAKYAN: I want to submit a reply to this. Can
20 I submit by email?

21 THE COURT: What you need to do is call the Pro Se
22 Office here in the Court, and I will get you that phone number,
23 and you can call them, and they will help you with the
24 logistics of how to file your reply, your opposition, as we
25 call it. Okay?

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MS. ELBAKYAN: Okay.

THE COURT: Give me one second. I'm getting the phone number for you.

The phone number of the U.S. Pro Se Office is 212-805-0175.

MS. ELBAKYAN: 21- --

THE COURT: 212-805-0175.

MS. ELBAKYAN: Okay. 212-805-0175.

THE COURT: Right.

And there's a website, this is The United States District Court for the Southern District of New York, and it is in the Pro Se Office of that court. So if you go to the court website and look for the Pro Se Office, it explains what its role is and how it accepts papers submitted by people who don't have lawyers, by pro se litigants.

MR. DeMARCO: Your Honor, may I make a suggestion?

THE COURT: Go ahead, Mr. DeMarco.

MR. DeMARCO: Maybe it makes sense for us to schedule, while we have everyone on the line, another call a week from today, at 4:30. By that time, we should have any papers that the defendant has submitted, and the defendant will have had time to determine whether or not she is going to come to the hearing and represent herself at the hearing or get an attorney, and I think it might be beneficial for the efficiency of the following Tuesday if we just had another brief call like

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1 today.

2 THE COURT: That's fine. What time did you suggest?

3 MR. DeMARCO: At the Court's discretion, of course.

4 THE COURT: No, no. It's fine. What did you suggest?

5 MR. DeMARCO: 4:00.

6 THE COURT: So why don't we have another conference
7 call at 4:00 on the 13th.

8 MS. ELBAKYAN: 13th.

9 THE COURT: Yes.

10 Sorry. You said a week from today. So on the 14th.
11 On the 14th, a week from today, on July 14th, at 4:00, we will
12 have another conference call.

13 Again, the goal here is to just talk about how we're
14 going to go about doing things, about logistics, and to see if
15 there is a need to put off the hearing or if the hearing will
16 take place on the 21st. Okay?

17 MR. DeMARCO: Your Honor, if we did put it off, would
18 your Honor retain the case?

19 THE COURT: I don't know. I would have to talk to
20 other judges, see when it would be scheduled for and the like
21 because, as you know, it is Judge Sweet's case. I don't know
22 the answer to that.

23 MR. DeMARCO: The papers are a little voluminous, and
24 I feel bad making more than one judge read them.

25 THE COURT: I understand. It depends. If, for

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1 example, we know sooner rather than later that it is going to
2 be put off, that would be useful for planning for everyone
3 involved, frankly. If is there a need for this to move, for
4 example, to later in July or August or even September, when
5 Judge Sweet is back, then I think that would change. So the
6 more information you can provide me on that, the sooner the
7 better.

8 MR. DeMARCO: Understood.

9 THE COURT: All right. So Ms. Elbakyan, you are going
10 to submit what we call an opposition, a response to the papers
11 submitted by the plaintiff, by Elsevier. You are going to call
12 the Pro Se Office and talk about how you will get those papers
13 filed. They're due on Monday, the 13th. But you can speak to
14 plaintiff's counsel. Perhaps, for efficiency, you can email
15 the opposition to plaintiffs.

16 Do you have a problem with that, Mr. DeMarco?

17 MR. DeMARCO: I just as soon get them through the
18 pro se clerk or ECF, your Honor.

19 THE COURT: It sometimes takes longer, which is why I
20 was suggesting that, but that is up to you.

21 What is your email, Ms. Elbakyan?

22 MS. ELBAKYAN: My email?

23 THE COURT: If there is a reason that the Court needs
24 to get in touch with you, do you want to provide me with your
25 email or your contact information?

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1 MS. ELBAKYAN: Yes. Email can be found online, so you
2 can Google it.

3 THE COURT: I assume it is one of emails at which you
4 were served in this case. So it is mindwrapper@Gmail.com?

5 MS. ELBAKYAN: Yes. That's correct.

6 THE COURT: We want to be able to get in touch with
7 you. If you don't defend in an action, if you don't respond on
8 time and follow the orders of the Court, then you may be held
9 in default. I just want to make sure that you are aware of
10 everything going forward. You may want to look into trying to
11 get an attorney to represent you in this action, because again
12 someone needs to represent you at the time of the hearing.

13 So Mr. DeMarco, other than the call a week from today,
14 on Tuesday, the 4th, do you want to write the Court in advance?
15 You're free to do that. We can leave it to the Tuesday call,
16 but if you have any other suggestions for how to proceed, if
17 you want to talk to Ms. Elbakyan, for example, it may be that
18 you're able the coordinate about next steps and submit a letter
19 both to Judge Sweet and to me just proposing next steps in this
20 case.

21 MR. DeMARCO: I think, at the minimum, your Honor, we
22 will get back to you very quickly on the question of whether or
23 not we're going to be seeking discovery, which I think will or
24 won't have an effect on the scheduling in the event that we are
25 or are not. We will know that very shortly. As soon as I know

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1 that, with your Honor's permission, we will ECF-file a letter
2 to the Court on that and, obviously, serve the defendants, as
3 we have before. And if we have any other thoughts or
4 suggestions -- my understanding again from your Honor's rules
5 is that with respect to even hearings where parties attend,
6 direct is typically by affidavit with cross of the witnesses
7 live.

8 THE COURT: That's correct, unless there is a
9 particular application to have a witness testify live.

10 MR. DeMARCO: Obviously, I have to go back and talk to
11 my client about today's developments, but it may very well be
12 that we still are going to proceed purely on our papers for
13 purposes of direct. We will know more once we see any
14 opposition papers submitted.

15 THE COURT: So Ms. Elbakyan, you're going to submit an
16 opposition. You're going to call in again a week from today at
17 4:00. I'm going to draft an order to this effect that
18 plaintiffs will serve on you, and you will call the Pro Se
19 Office if you have questions about the procedure of how to file
20 things, and you will try and get an attorney who may be able to
21 represent you, if you so choose.

22 MS. ELBAKYAN: Okay.

23 THE COURT: Remember that corporations cannot
24 represent themselves. You can represent yourself, but they
25 need to have a lawyer represent them. Okay? Do you understand

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1 that?

2 MS. ELBAKYAN: Yes. Can I represent myself in this
3 case?

4 THE COURT: You can represent yourself individually,
5 but as to any corporate entity, it needs to be represented by
6 an attorney.

7 MS. ELBAKYAN: Okay.

8 THE COURT: All right. Okay. I think that I will
9 await the opposition, a letter from plaintiff, and we will talk
10 again next Tuesday.

11 MR. DeMARCO: Thank you, your Honor.

12 THE COURT: Thank you.

13 (Adjourned)